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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 DAVID HERRERA ROMAN,
12 BOP #24116298,

13 Plaintiff,

14 vs.

15 GERBATSH, M.D.,
16

17 Defendant.
18

Civil No. 11-1500 WQH (MDD)

**ORDER DISMISSING CIVIL
ACTION AS DUPLICATIVE
PURSUANT TO 28 U.S.C.
§ 1915A(b)(1)**

19
20 Plaintiff, an inmate currently incarcerated at the Western Regional Detention Center
21 located in San Diego, California and proceeding pro se, has filed a civil rights Complaint
22 pursuant to 42 U.S.C. §1983. In addition, Plaintiff has filed a Motion to Proceed *in forma*
23 *pauperis* (“IFP”).

24 **I. Sua Sponte Screening Pursuant to 28 U.S.C. § 1915A(b)**

25 The Prison Litigation Reform Act (“PLRA”), 28 U.S.C. § 1915A, obligates the Court to
26 review complaints filed by anyone “incarcerated or detained in any facility who is accused of,
27 sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or conditions
28 of parole, probation, pretrial release, or diversionary program,” “as soon as practicable after

docketing” and regardless of whether the prisoner prepays filing fees or moves to proceed IFP. *See* 28 U.S.C. § 1915A(a), (c). The Court must sua sponte dismiss prisoner complaints, or any portions thereof, which are frivolous, malicious, or fail to state a claim upon which relief may be granted. 28 U.S.C. § 1915A(b); *Resnick v. Hayes*, 213 F.3d 443, 446-47 (9th Cir. 2000).

Plaintiff’s instant Complaint is subject to sua sponte dismissal pursuant to 28 U.S.C. § 1915A(b)(1) because it appears to be duplicative of a case Plaintiff is already litigating. Plaintiff’s Complaint contains identical claims that are found in *Roman v. Gerbatsh*, S.D. Cal. Civil Case No. 11cv1442 H (BLM). A court “may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue.” *United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).

A prisoner’s complaint is considered frivolous under 28 U.S.C. § 1915A(b)(1) if it “merely repeats pending or previously litigated claims.” *Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995) (construing former 28 U.S.C. § 1915(d)) (citations and internal quotations omitted). Because Plaintiff is already litigating the same claims presented in the instant action in *Roman v. Gerbatsh*, S.D. Cal. Civil Case No. 11cv1442 H (BLM), the Court hereby **DISMISSES** Civil Case No. 11cv1500 WQH (MDD) pursuant to 28 U.S.C. § 1915A(b)(1). *See Cato*, 70 F.3d at 1105 n.2; *Resnick*, 213 F.3d at 446 n.1.

II. Conclusion and Order

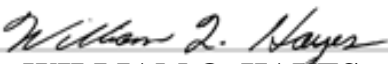
Good cause appearing, **IT IS HEREBY ORDERED** that:

Plaintiff’s Complaint in Civil Case No. 11cv1500 WQH (MDD) is **DISMISSED** as frivolous pursuant to 28 U.S.C. § 1915A(b)(1).

The Clerk shall close the file.

IT IS SO ORDERED.

DATED: August 18, 2011


WILLIAM Q. HAYES
 United States District Judge